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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,639

10/22/2003

Richard Fearn

4051

26131

7590

10/20/2006

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EXAMINER

DEVOTI, PAUL D

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/689,639	<b>Applicant(s)</b> FEARN, RICHARD	
	<b>Examiner</b> Paul Devoti	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 6,7 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,7 and 9-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-7, 9-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell et al. (US 4790509).
3. Regarding claims 6, 10-12, 14-16, 18-20, Cardwell discloses a concrete form element (12) filled with concrete, having a portion (10) extending outwardly from its perimeter. The portion (10) is secured to first and second support members (52, 54), and the form element (12) is seated in an upstanding position. The first and second support members (52, 54) are braced by struts (60). Cardwell discloses the form element (12) can be fabricated from cardboard, which is made from paper. Paper material is capable of being flexed, and therefore would obviously be considered as a "flexible" material.
4. Regarding claim 7, the form element (12) is left in place as it cures (column 2, lines 44-48).
5. Regarding claim 9, the form element (12) can be peeled or torn away (column 2, lines 44-48), and therefore is obviously capable of being cut from a larger length of material.

Art Unit: 3637

6. Regarding claim 13, the portion (10) is sandwiched between the first and second support members (52, 54).

7. Regarding claim 17, the struts (60) are held in place by ground stakes (as seen in Figure 1). The stakes are adjacent the form element (12), and attached to the portion (10) via the struts (60).

8. Regarding claims 6-7, 9-20, Cardwell discloses all of the structural limitations of the claimed invention, and method as recited in these claims would be an obvious method of using the concrete form element of Cardwell.

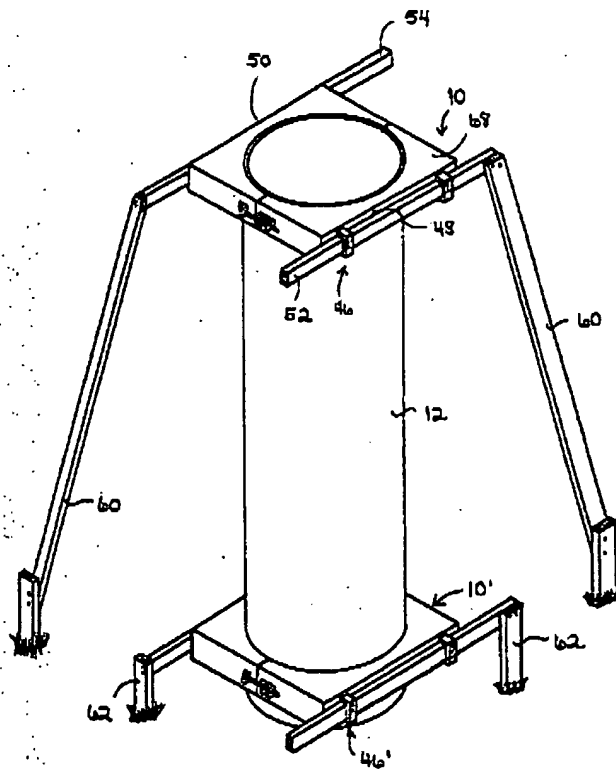


Figure 1

Cardwell et al. (US 4790509) Figure 1

Art Unit: 3637

9. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell et al. (US 4790509) in view of Weekers (US 5376316).

10. Regarding claims 21, 24, Cardwell discloses everything previously mentioned, but does not disclose that the form element is unrolled from a roll. Weekers, however, discloses a concrete form element made of a paper material that is unrolled from a roll (as seen in Figure 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the form element material to be packaged in a roll and then unrolled, as this would make it easy to ship the material to a job site and then select a desired amount of the material.

11. Regarding claims 22, 25, Cardwell in view of Weekers discloses everything previously mentioned, including the paper material would obviously be capable of being folded.

12. Regarding claims 23, 26, Cardwell in view of Weekers discloses everything previously mentioned, including the form element would obviously be capable of flexing and distending while filling with concrete, as the form element is made from paper, which is a flexible material.

13. Regarding claims 21-26, Cardwell in view of Weekers discloses all of the structural limitations of the claimed invention, and method as recited in these claims would be an obvious method of using the concrete form element of Cardwell in view of Weekers.

***Response to Arguments***

14. Applicant's arguments filed 01 August 2006 have been fully considered but they are not persuasive.

15. Regarding applicant's argument that the form element tube is not flexible: Cardwell discloses the form element (12) can be fabricated from cardboard, which is made from paper. Paper material is capable of being flexed, and therefore would obviously be considered as a "flexible" material.

16. Regarding applicant's arguments about the use of support members: Caldwell clearly discloses the form element (12) has a portion (10) extending outwardly from the perimeter, and is secured to support members (52, 54) which help position the form element.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3637

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD *PD*  
10/12/06

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*Lanna Mai*